

## **FRIDAY UPDATE—FEBRUARY 4, 2005**

*The weekly update of the activities of the Indiana General Assembly  
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Another week at the General Assembly has ended. Below are reports on bills discussed this week.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at [http://www.in.gov/serv/lisa\\_billinfo](http://www.in.gov/serv/lisa_billinfo).

You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

### CIVIL LAW:

The House Insurance Committee heard testimony, but did not vote on, HB 1076, which provides that, in an action against an insurer, only a named insured (or person seeking status as an insured) may bring an action for declaration of insurance coverage before judgment has been entered on the underlying claim. Representatives of the insurance industry testified in support of the bill, stating that it will reduce conflicts of interest between insureds and insurers. A representative of the Indiana Trial Lawyers Association testified in opposition, stating that the bill will make insurance litigation cost more and take longer. The committee will entertain an amendment and further testimony next week.

The House Public Safety & Homeland Security Committee heard HB 1776 concerning seizing weapons from a mentally ill individual, presented by Rep. Buell. This bill provides that law enforcement can apply for a warrant to seize a firearm possessed by an individual who is believed to be mentally ill and dangerous, and provides for return of the firearm upon request unless the prosecutor petitions the court to order law enforcement to retain the firearm or the court has ordered law enforcement to retain the firearm after a hearing. The Committee heard supporting testimony from Michael Laird, father of Officer Jake Laird, the Mental Health Association, Indiana Fraternal Order of Police, Indianapolis Police Dept., and the Public Safety Advisor for Indianapolis Mayor Bart Peterson. Also, Judge Goodman, Marion Superior Court, testified before the Committee and offered several suggestions to revise the language of the bill. The Committee decided to hold the bill until next week for amendments and a vote.

The Senate Government Affairs and Interstate Cooperation Committee heard SB 310 on Wed., February 2, 2005 regarding open door law violations. Sen. Gard, author, explained the bill requires a member of the government body to be present to vote and prohibits serial meetings in an attempt to circumvent the quorum rule of the open door law. Questions from committee members centered on the definition of "gatherings" of members, whether the rule applied to caucuses, an exception for university boards of trustees members who lived out-of-state, and applicability to school boards. The Hoosier

State Press Association favored the bill, as did other advocates. The Indiana School Board Association opposed it. Much testimony came from Indiana and Purdue Universities about the legislation. The chair of the committee, Sen. Reigsecker, decided to hold the bill until next week's meeting of the committee in order to work on the concerns raised.

SB 352 would permit the application of Indiana's Unsafe Premises law to vacant tracts of land, in addition to buildings, if passed by the Senate Government Affairs and Interstate Cooperation Committee and the Indiana General Assembly. Sen. Broden, author, eloquently explained this law would permit local governments to apply existing law to tracts of property that are a fire hazard, hazard to public health, a public nuisance or dangerous or vacant, to get them cleaned up. The law now permits notice to the owner and a hearing before a hearing officer with a right to appeal an adverse decision to the local circuit or superior court. The use of this law is permissive and may not be needed in counties like Marion, which have an environmental court. The cities of South Bend and Indianapolis supported this bill, as did the Indiana Association of Cities and Towns. The bill passed 9-0 with an amendment exempting farmland.

#### CRIMINAL LAW:

The House Courts and Criminal Code Committee considered HB 1583 on road rage. The author of the bill explained to the committee that the bill is also known as "Lindsay's bill", in honor of Lindsay Thompson. She and another teenager were killed last year when a motorist on I-465 forced them off the road in an act of road rage, causing them to cross the median and strike an oncoming car, killing both teens instantly. The committee heard emotional testimony from the families. The bill would make road rage a class A misdemeanor. The offense would be a Class D felony if it results in serious bodily injury and a Class C felony if it results in death. The Prosecuting Attorneys Council testified in support of the bill, and cautioned the committee that the bill may not make prosecution easier because it requires specific intent to harass or intimidate. The Council suggested working on the bill to make it more like "aggressive driving" (used in many states), which would not require any intent. The committee did not vote on the bill, and the chair appointed a subcommittee to work on amending the bill.

The House Courts and Criminal Code Committee considered HB 1223, one of several bills dealing with methamphetamine. The bill would require in real estate transactions that the owner disclose that property had been used to manufacture methamphetamine. The bill also would make ephedrine and pseudoephedrine Schedule V substances, requiring that products such as Sudafed be kept "behind the counter" and distributed by a pharmacist. The bill was supported by the Indiana State Police and opposed by the Retail Council, Consumer Health Care Products and the Indiana Retailers Association (all favored SB 444, which limits over-the-counter sales of cold medicine). The committee did not vote on the bill and it will be considered next week.

Sen. Long presented SB 101 to Senate Corrections. The bill will allow a court, on its own motion or the probation department's, to hold a hearing to modify probation

conditions without any violations having been found or revocation sought. He noted that the bill had been drafted for and approved by the Sentencing Policy Study Committee, and was intended to help avoid recommitment of offenders to prison or jail by giving the courts flexibility to modify probation terms early to avoid later serious violations. Larry Landis, Public Defender Council, and Steve Johnson, Prosecuting Attorneys Council (both members of Sentencing Policy Study Committee) endorsed the bill, and it passed unanimously.

The Senate Judiciary Committee heard SB 180, community corrections for certain OWI offenses, authored by Sen. Lanane. The purpose of this bill is to give judges more discretion with 3rd time OWI offenders, rather than simply being required to commit them to DOC. The bill was amended to require that a court had to order the offender to either work-release or electronic monitoring if the court chose the community corrections option. The bill passed 7-2 as amended.

The Senate Committee on Homeland Security, Utilities, and Public Policy unanimously recommended the passage of SB 523, which makes permanent a temporary (two-year) law that permits certain drug offenders participating in a reentry court program to receive food stamps or temporary assistance for needy families (TANF). Representatives of the Department of Corrections and the Mental Health Association testified in support of the bill.

The Senate Committee on Health and Provider Services revisited SB 444 , which limits the amount of ephedrine or pseudoephedrine (methamphetamine precursors) that can be sold at one time, which prescribes secure storage of those precursors, and which sets forth criminal penalties for improper sale or storage of the precursors. The committee heard testimony on amendments that:

1. would make the bill apply to drugs containing both ephedrine and pseudoephedrine (instead of just one or the other);
2. would permit the sale of 100 tablets of ephedrine or pseudoephedrine (or both) in bottle packaging; and
3. would prohibit local governments from passing ordinances more stringent than the bill after June 30, 2005. The committee unanimously recommended that the bill pass as amended.

The Senate Corrections, Criminal and Civil Matters Committee heard SB 334 concerning murder sentencing which would add an aggravating factor warranting the death penalty or life without parole, that the defendant violated a protective order. The bill would also allow evidence of defendant's criminal history and delinquency to be placed before the jury.

Author, Sen. Young said that in past years a number of murders had been committed by subjects of protective orders against the protected person; he also said the criminality evidence provision was suggested by Marion County prosecutors. Laura Berry of the Indiana Coalition Against Domestic Violence spoke in favor of the bill. Both

Larry Landis, of the Public Defender Council, and Steve Johnson, of the Prosecuting Attorneys Council, recommended that the bill not be passed. They were convinced that the criminality evidence provision would violate the Indiana Constitution as construed in *Bivins v. State*. They also thought that there were enough aggravating circumstances in the present death penalty statute. Mr. Johnson said that his death penalty litigation subcommittee would not approve the aggravating circumstance sought here when former Marion County Prosecutor Scott Newman had urged its endorsement. When asked, Mr. Johnson agreed that there could be murders with a protective order violated to which none of the present death penalty aggravators would apply. On Sen. Bray's motion, the Committee amended the bill to delete the criminality evidence provision. Sen. Long held the vote until the end of the meeting, and the bill passed by a vote of 8 to 3.

#### FAMILY LAW:

SB 422, adoption procedural requirements, authored by Sen. Clark and discussed in last week's update, was considered by Senate Judiciary. Two controversial issues contained in the original bill were the subject of amendments: the mandate on record-keeping, which is no longer a mandate; and the issue of facilitator licensing, which has now been completely removed from the bill. With these two major changes, the bill passed 9-0.

#### JUDICIAL ADMINISTRATION:

HB 1113 increasing service of process fees authored by Rep. Richardson was heard by House Judiciary Committee on Monday, January 31, 2005. Rep. Richardson explained the point of this legislation is to place a service fee of \$10.00 for each defendant in all civil cases to pay the costs of certified mail. This bill would also increase the present \$5.00 fee in small claims cases to \$10.00.

Linda Phillips, Clerk, Tippecanoe County said she spends \$45,000 each year on certified mail fees. This bill would help with the increasing costs. Teresa Brown, Clerk, Allen County said 26% of all small claims documents were sent via certified mail costing \$188,000 annually. Linda Grass, Clerk, Hancock County, and President of the Clerk's Association said her organization supports the bill. Counties have limited funds. The Indiana Association of Counties also voiced support of the proposed new law.

In response to discussion, Rep. Ulmer offered an amendment to indicate the party filing the civil action would pay a \$10.00 service fee per defendant, and the defendant adding a party would pay a \$10.00 service fee for each party the defendant adds. With an amendment to apply this same principal to small claims cases, the legislation passed the committee as amended 7-2.

The Senate Judiciary Committee heard SB 17, Hendricks superior courts. This bill, authored by Sen. Connie Lawson would provide Hendricks County with a full-time magistrate until January 1, 2007, and then create two additional courts on January 1, 2007. Judge Freese and Judge Love testified that there has been tremendous population

growth in Hendricks County necessitating the creation of these two courts. Many of the committee members expressed interest in prioritizing the requests for new courts and ultimately looking at a multi-court bill. The bill passed 11-0 and was recommitted to Senate Appropriations.

Similarly, SB 161, Madison superior court magistrate was also considered. Sen. Lanane presented this request, highlighting that Madison County is already bearing the burden of paying for over two judicial officers out of local funds. Tim States, the Madison County Court Administrator and Judge Clem testified in favor of this bill. It passed 11-0 and was also recommitted to Senate Appropriations.

SB 322, local spending on criminal defense, was next on the agenda. Sen. Bray authored this bill at the request of Attorney General, Steve Carter, who testified that this bill would prevent local governments from paying the costs of defense for employees or officers who were defendants in criminal cases, and also in civil RICO actions, where the underlying criminal activity arose out of that officer's or employee's employment/office. He felt strongly that taxpayers should not be paying for both the costs of prosecution and defense. Numerous issues were discussed including reimbursement if found not guilty and reasonable attorneys fees. Sen. Bray decided to appoint a subcommittee and scheduled the bill to be reconsidered next week.

In a similar vein, two other bills were heard: SB 646, removal from office for conviction of a felony, authored by Sen. Mrvan, and SB 18, loss of office by convicted official, authored by Sen. Lawson. Both of these bills try to deal with determining a time certain when an office holder who is convicted of a felony vacates that office. In addition, Sen. Lawson's bill tries to reconcile the election code with the criminal code. Sen. Bray appointed another subcommittee to blend these two bills for reconsideration next week.

#### MISCELLANEOUS:

The House Government and Regulatory Reform Committee heard HB 1188 concerning a moratorium for boards and commissions and adopted an amendment which would establish the government efficiency commission to make recommendations to improve the efficiency and reduce unnecessary costs associated with any board, commission, state funded agency, department or program. This amendment does not include sunset provisions for boards or commissions. The Committee passed the bill as amended 12-0.

The House Local Government Committee heard HB 1435 concerning Marion County local government reorganization, presented by Rep. Crawford. This bill includes provision to reorganize the Marion County Small Claims courts. Judge Sosin, Marion Circuit Court, testified before the committee concerning the benefits of the current system and the impact the reorganization would have if this bill is passed. The bill is still under consideration by the Committee.

#### SALARIES & BENEFITS:

HB 1777, a salary increase for all Indiana judges and prosecutors was heard on Monday, January 31, 2005 in the House Judiciary Committee. Rep. Foley, coauthor with Rep. Richardson said this is the time to address the judiciary. He said Indiana does not overcompensate any service to the state. However, judges must give up their private practice and then must reestablish a private office. Indiana trial court judges are 48th in the nation in pay. He said the bill increases salaries for trial court judges to \$121,122, appellate and tax court judges to \$139,951, and justices of the Supreme Court to \$143,195 annually. These were the same amounts recommended by the Compensation Commission. This will be paid by a \$19.00 increase in filing fees and Rep. Foley stated most jurisdictions have lower court fees. Rep. Foley distributed an amendment to increase the court costs of Marion County Small Claims Court by \$19.00, which the committee agreed to by consent.

Rep. Foley reported that under this legislation, it is projected the state would receive \$371,908 more annually than it paid out. Rep. Kuzman, while supporting the legislation, questioned whether any of the \$19.00 increase could go to defray the expenses of city and town courts, which now get no state monies to pay for judicial salaries. Rep. Ulmer mentioned Goshen City Court might have to shut down because of cost concerns. Rep. Foley replied he had pledged to keep the bill free of any amendments other than the one just passed, and wanted to keep the bill revenue neutral. While agreeing he did not want to hold this bill up in any way, Rep. Kuzman agreed to talk about this matter with Rep. Foley. Rep. Barton expressed concern about the increase in Marion County Small Claims fees and later voted against the legislation.

Chief Justice Randall T. Shepard was the first witness to speak in favor of the bill. He said there is no institutionalized way to make cost of living adjustments so judges must come back every eight to ten years. This bill is nothing more than a "catch up." Salaries have a great impact on families of judges and in the recruitment of new judges. The chief justice closed his remarks with a quick comment - "If Rep. Foley and I were in a courtroom, I would grant his motion!" This broke the silence as all in the room laughed. In response to a question from Rep. Kuzman, he said he would work with him on revenue sharing with cities and towns for the \$19.00 increase in court costs.

Judge Marc Kellams, President, Indiana Judges Association said lawyers do not go on the bench to make money. But when overlooked year after year, we begin to wonder. He said SB 363 would address salaries on a long-term basis and asked for passage of this bill to address salaries today. Jim Fleming, representing the Indiana Prosecuting Attorneys Association echoed the comments of earlier speakers. He said more crime laws are passed each year, and more obligations come with the prosecutor's job without pay increases, such as community corrections boards and child fatality review boards. Jim Riley, President-Elect, Indiana State Bar Association stated the Board of Governors support the "catch-up" provisions of this bill and continued periodic salary increases. Steve Williams, representing the Insurance Institute of Indiana reported this is important for Indiana's economy and top-notch judges are needed to maintain the rule of

law. Terrie Todd, Indiana Trial Lawyers Association said we have highly qualified judges that are underpaid.

Scott Tittle, Special Counsel to Governor Mitch Daniels, representing the governor said the governor supports the bill. Rep. Van Haaften said, as a former prosecutor, this is the time to pass the bill. We need quality judges. The bill passed as amended, 11-1.

#### TRAFFIC:

The Senate Government Affairs and Interstate Cooperation Committee heard SB 570 concerning a pilot program for an automated traffic law enforcement system presented by Sen. Mishler, which would photograph car licenses of cars running through red lights at more than 18 miles per hour.

Provisions of the law included the notice sent to the driver of the violation, the prohibition against points on the license for a violation of the law, the use of a warning sign at the intersection where this system is used, provisions for the contractual arrangements with operators of the system, and defenses to violations of the law. The mother of a victim of a fatal red light running accident, the Public Safety Advisor to Mayor Bart Peterson, Indianapolis, and representatives of the Insurance Institute of Indiana, City of South Bend and the Indiana Association of Cities and Towns, and the past president of the Carmel City Council spoke in favor of the bill. An INDOT representative voiced concern about some wording in the legislation, but was otherwise neutral. A representative of the Carmel Motorists Association spoke against the bill. The committee adopted a technical amendment and the bill passed 6-1.na.